

REPLY BRIEF OF APPELLANT

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

15-3951

JAMES W. HALL

Appellant,

v.

ROBERT A. MCDONALD,
SECRETARY OF VETERANS AFFAIRS,

Appellee.

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APPELLANT'S REPLY ARGUMENT

Contrary to the Secretary's argument, it is far from clear that the Board appropriately considered the Veteran's lay statements in this case. Sec. Brief at 7-8. The Board merely noting that the Veteran believed that his service was "near the DMZ" was insufficient to demonstrate its full consideration. *See Id.*; R-8 (2-13). *See* 38 U.S.C. 7104.

The Board's bare statements of reasons or bases leaves it uncertain whether it actually considered that the Veteran's lay statement placed him only five miles from the DMZ during his service in Korea. R-58 (56-59); R-71-72. Notably, this is significantly closer to the DMZ than where the JSSRC formal finding placed the Veteran during his service. R-71-72. The Board's reasons and bases also leaves doubt that it considered that the Veteran mentioned "Delta Tactical" in his lay statement, a site that the JSRRC's finding does not mention at all. R-58; R-71-72. Where this site was, and its proximity to the DMZ, was never explored.

The Board's failure to appropriately consider this evidence is prejudicial because it places the Veteran closer to the DMZ than the JSRRC's formal finding. R-71-72. Proximity to the DMZ is important when considering exposure to Agent Orange while in Korea. *See* 38 C.F.R. § 3.307(a)(6)(iv) (2016). This lay evidence demonstrates that Mr. Hall was near the DMZ during his time in service. *Apa. Open Brief* at 4-8. Further, the fact that the Board failed to establish the location of the

“Delta Tactical” site leaves open yet another possibility that Mr. Hall was at or near the DMZ while stationed in Korea.

Despite the Secretary’s argument, the Board’s discounting of the Veteran’s lay statements because it was “at odds” with the JSSRC’s report is in fact discounting that statement because it was not corroborated by other evidence. Sec. Brief at 8. This was improper. Apa. Open. Brief at 6. Mr. Hall was competent to report his proximity to the DMZ and areas of his service. Apa. Open. Brief at 5-7. This evidence can be in and of itself sufficient to establish that Mr. Hall was near the DMZ. *Buchanan v. Nicholson*, 451 F.3d 1331, 1337 (Fed. Cir 2006). It needs no independent corroboration. Apa. Open Brief at 6. Remand is required for the Board to adequately consider the Veteran’s credible lay evidence before deciding Mr. Hall’s claim.

CONCLUSION

For these reasons, as well as those provided in the opening brief, remand is required for the Board to adequately consider the Veteran’s lay statements. If the Board had adequately considered that evidence, it could have found that the Veteran was at or near the DMZ, which would be sufficient to find him exposed to Agent Orange.

Respectfully submitted,

James Hall

By His Representative,

/s/ Christian A. McTarnaghan

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